

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CAROLYN ANDERSON,

Plaintiff,

v.

FOUR OUR FAMILIES, INC. and
CALL-EM-ALL, LLC.,

Defendant.

CASE NO. C11-0902RBL

ORDER

THIS MATTER is before the Court on Call-Em-All, LLC's (CEA) Motion for Summary Judgment [Dkt. #107] and related thereto Four Our Families, Inc.'s (FOFI) Motion to Strike Exhibit 6 [Dkt. #115]. The Court has reviewed the materials filed in favor and in opposition to said motions and for the reasons stated in open court on September 14, 2012, hereby rules as follows:

1. The Motion to Strike [Dkt. #115] is **DENIED**. The e-mail is in no way protected by Attorney-Client Privilege or Attorney Work Product Privilege. The e-mail is an Admission by a Party-Opponent and is properly considered by the Court.
2. The Motion for Summary Judgment [Dkt. #107] is **GRANTED**. The Terms and Conditions were accepted by Michael Brown of FOFI. The Terms and Conditions

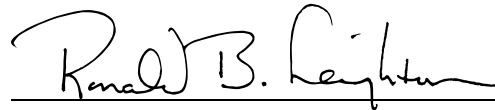
1 contained the indemnity provision that CEA seeks to enforce. That indemnity
2 provides as follows:

3 You agree to indemnify, defend and hold harmless Call-Em-All, its
4 officers, directors, owners, employees, agents, other Service
5 Providers, vendors or customers from and against all losses,
6 liabilities, expenses, damages and costs, including reasonable
7 attorneys' fees resulting from any violation of the User Agreement
8 by you or any harm you may cause to anyone. You agree and we
9 reserve the right, at your expense, to assume the exclusive defense
10 and control of any matter otherwise subject to indemnification by
11 you. [ECF Doc. # 107-2 at p. 61, ¶25].

12 3. Call-Em-All did not tender the defense to FOFI.

13 Therefore, the Court enters judgment in favor of Call-Em-All, LLC against Four Our
14 Families, Inc., the sum of \$5,000, the sum paid by Call-Em-All, LLC to settle the claims of the
15 plaintiff and further, the sum of \$500.00 as reasonable attorney fees.

16 Dated this 14th day of September, 2012.

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Ronald B. Leighton
United States District Judge